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No. 89-1354

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

VERNON O. MAXWELL,
Petitioner,

v.

JAMES GOODWIN AND EDDIE HALLMAN,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

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QUESTION PRESENTED

Did the court of appeals correctly uphold a jury verdict in favor of respondents on their claim that they were wrongfully prosecuted in violation of 42 U.S.C. § 1983?

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STATEMENT OF THE CASE

Respondents sued petitioner (a deputy sheriff) and others on a number of counts, including malicious prosecution in violation of state law and wrongful prosecution without due process in violation of federal law. A jury awarded them compensatory damages against the petitioner totaling $150,000, bottomed on both the state law malicious prosecution claim[1] and the federal law wrongful prosecution claim.

The court of appeals (Russell, Chapman, and Butzner, JJ.) unanimously upheld the $150,000 compensatory damages verdict, although it set aside a punitive damages award of $175,000. Petitioner's rehearing petition was unanimously denied.

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[1] As to the state law claim, the damage award was entered jointly against petitioner and Sheriff James Metts, who is not a petitioner in this Court.

The petition for certiorari challenges the federal basis for the jury verdict but would not affect the judgment, since even if this Court were to set aside the verdict on the federal claim, the petitioner would still owe the $150,000 on the state law malicious prosecution claim.[2]

The case arose when respondents were arrested on a charge of larceny from their employer's house. Petitioner was the investigating officer. The arrest was based essentially on the statement of one alleged witness, "Terry Nelson."[3]

After the arrest, though, petitioner learned that "Nelson" had given a false name and address and could not be located. More important, another person, Michael Stafford, was arrested in a nearby city and

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[2] In fact, the judgment has already been paid.

[3] Another witness, Bobby Johnson, also provided a statement but his statement did not incriminate respondents.

confessed to a number of thefts including the crime with which respondents were charged.

When petitioner received Stafford's confession, he prepared and filed away reports "clearing" several crimes including the theft with which respondents had been charged. Petitioner did not bring the reports to anyone's attention or tell anyone else he had cleared the crime by Stafford's confession. Instead, he continued to maintain that respondents were the guilty parties.

Although the Solicitor (prosecutor) was unaware of the Stafford confession or of "Nelson's" unreliability, he believed the case against respondents was extremely weak or, as he put it, "100% trash." He refused to prosecute but, at the urging of the Sheriff's office, agreed to allow the

prosecution to go forward with a special prosecutor.[4]

Before agreeing to prosecute, the special prosecutor consulted with petitioner and other deputies and was assured that the case against respondents was meritorious and should be pursued. During the criminal trial the special prosecutor learned of Stafford's confession and asked petitioner about it, to which petitioner responded that the confession applied to other crimes but not this one.

The case thus proceeded to trial with petitioner, who was still concealing the exculpatory evidence, as one of the main prosecution witnesses. Following a week-long trial, the respondents were acquitted.

Later, after discovering Stafford's confession and other facts, respondents

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[4] The special prosecutor was the victim's personal attorney, who was told that he could prosecute the case or it would be nolle prossed.

brought this suit. The jury reached a verdict in respondents' favor on both state and federal claims, and that verdict was sustained by the district court on post-trial motions. When the court of appeals upheld the jury award as to compensatory damages this petition followed.

REASONS FOR DENYING THE WRIT

1. Because the judgment awarding the respondents $150,000 against the petitioner is based on a state claim as well as a federal claim, this Court's decision on the federal claim would not disturb the judgment. While that fact may not deprive this Court of jurisdiction, it does make review of the judgment "an anomaly." United States v. Hastings, 296 U.S. 188, 193 (1935). See also Hirabayashi v. United States, 320 U.S. 81 (1943); City

of Mesquite v. Aladdin's Castle, 455 U.S. 283, 292 (1983).

2. Apart from expressing some discomfort about the fact that the definitions of the state law and federal law claims have much in common, petitioner's complaints about the decision in this case are unclear. He very carefully refrains from saying there is a conflict in the circuits, because there is not. The cases cited in the Petition, pp. 5-6, show that wrongful criminal prosecution without due process is recognized as actionable under 42 U.S.C. § 1983 in virtually all of the circuits, and the standards governing such an action are similar from circuit to circuit.[5] The

[5] In addition to the cases cited in the Petition, see the following cases in other circuits: Dunn v. Tennessee, 697 F.2d 121, 125 (6th Cir. 1982), cert. denied 460 U.S. 1086 (1983); Hampton v. Hanrahan, 600 F.2d 600, 630 (7th Cir. 1979); Norton v. Liddell, 620 F.2d 1375, 1378 (10th Cir. 1980); Strength v. Hubert, 854 F.2d 421 (11th Cir. 1988); cf. Haynesworth v.

decision in this case, carefully considered by the district court and the court of appeals, is wholly consistent with the cases in other circuits. It is likewise consistent with this Court's acknowledgement of the constitutional interests involved in the pendency of serious criminal charges, e.g. Klopfer v. North Carolina, 386 U.S. 213 (1967), and of the affront to due process which a bad faith prosecution represents. Younger v. Harris, 401 U.S. 50 (1971).

3. Moreover, in addition to the general denial of due process involved in this prosecution, the petitioner committed a related but distinct violation of due process by concealing critical exculpatory evidence, both as to the Stafford confession and as to the phantom witness "Nelson." See Pet. App. 11a. Deliberate

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Miller, 820 F.2d 1245 (D.C.Cir. 1987) (Bivens action).

concealment of exculpatory evidence denies due process and renders a trial fundamentally unfair, to the point where any conviction that results must be reversed, Brady v. Maryland, 373 U.S. 83 (1963). By recognizing that such concealment of evidence may also support a federal claim for damages under § 1983, the court below was in accord with its own prior cases and with cases from other circuits.[6]

4. Ignoring all of this, the petitioner asserts that the fact that

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[6] Barbee v. Warden, Maryland Penitentiary, 331 F.2d 842 (4th Cir. 1964), holds that withholding exculpatory evidence by police officers violates the same due process requirements which Brady imposes on prosecutors. This holding is consistent with § 1983 cases finding police officers liable for wrongful prosecution accomplished through concealment or fabrication of evidence. E.g., Wheeler v. Cosden Oil and Chemical Co., 734 F.2d 254, 260, on reh., 744 F.2d 1131 (5th Cir. 1984); Jones v. City of Chicago, 856 F.2d 985 (7th Cir. 1988); Cline v. Brusett, 661 F.2d 108 (9th Cir. 1981); Anthony v. Baker, 767 F.2d 657 (10th Cir. 1985).

respondents were acquitted means they necessarily received the process they were due. Pet. 7, 8. This is wrong, because the mere fact that respondents achieved a correct result -- i.e., that they were found not guilty -- does not mean that the trial process was proper. In point of fact, the respondents were acquitted despite an unfair trial.

Petitioner's position would also mean that the cause of action for wrongful prosecution without due process could hardly exist. The courts have generally held that favorable termination of the underlying prosecution is a prerequisite for maintenance of the § 1983 action, e.g., Morrison v. Jones, 551 F.2d 939, 940 (4th Cir. 1977). Yet the petitioner would turn favorable termination into a defense.[7]

[7] Petitioner, no doubt aware of the contradiction, implies that perhaps a conviction should not bar an unhappy defendant from prevailing on this cause of action, Pet. 7, but this is hardly the case

Under this view, a policeman's conduct, no matter how egregious, would always be immunized from a wrongful prosecution claim if the prosecution ended in an acquittal.

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in which to begin such a wholesale rewriting of established principles of libility.

CONCLUSION

The Petitioner seeks to invite the Court into academic speculation about the due process clause, in a case where the judgment would not be affected. The Petition should be denied.

Respectfully submitted,

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